

From: David A. Chappel
To: Microsoft ATR
Date: 1/23/02 3:23pm
Subject: Microsoft Settlement

Dear Judge Kollar-Kotelly;

I would like make a few comments regarding the proposed settlement.

Today there is plenty of cynicism regarding the legal system. It is a commonly held belief that if one has enough resources, then one can "buy" success in court given sufficient legal resources. I will leave the correctness of this to others. I would like to address erosion of the legal system by the perceptions created by this settlement; then I would like to address the economic ramifications of the precedent set by this settlement.

For a legal system to operate successfully, there must be a "buy-in" to the belief in the "fairness of the system" in resolving disputes, or criminal cases. If individuals and companies do not commonly accept this principle then they will find other avenues to settle claims, and the rule of law will be damaged.

I fear that for many this proposed settlement will add weight to this popular belief. In short, allowing Microsoft to settle the claim that it abused its monopoly by donating software (possibly using the donation as a tax deduction) to needy schools. While I do not dispute the need of the schools, it truly a clever ruse Microsoft is playing with the *compliance* of the Department of Justice. Given Microsoft has abused its monopoly, the punishment ought not to be that it must increase its market share in the educational market. Remember that software has nearly zero marginal cost and so it will cost Microsoft very little. This sends a perverse message to other companies and individuals who may consider breaking the law or a contract. For those that have substantial resources the message is "I won't be held accountable" and for those without the resources it is "I wouldn't be held accountable if I was wealthy--so the law is unfair." To those on the front lines charged with enforcing laws the message is "Do not waste our resources by enforcing rules against those with substantial resources of their own." Correct or not, these messages damage the legal system by eroding the notion of "one law for all" that makes individuals participate in the shared belief in law, and that breaking the law is not respectable.

There are also ramifications for our economic wellbeing. If expected penalties for abusing a monopoly are deemed less than the benefits derived, it will only encourage more monopoly abuses. This will lead to fewer firms in markets and less innovation as a whole, as the large impede the innovative. Please note that there is no reason to assume that this precedent will be limited to the technology sector.

While public comments are to be limited to the settlement, I feel I must also

express my disappointment with the DOJ. It appears that the DOJ has rightfully embraced a new set of priorities after September 11th, however it is not sufficient to ignore those responsibilities unrelated to terrorism. Fighting Microsoft in court and in "public court" may be expensive and may not be politically expedient, but it is extremely important for efficient functioning of markets. Budgetary demands to the DOJ are small in comparison to the economic cost which would be incurred by this settlement. Furthermore, those companies which enjoy a monopoly are typically those companies with the resources to fight a prolonged legal battle. If the DOJ is unwilling to expend the resources to fight a large company, then how can it expect to fulfill its mandate? It is as if the municipal police declare that they will uphold the law against speeding but will charge only those who drive slow cars.

It is my hope that the DOJ renews its resolve in upholding and enforcing these important laws. I hope that those within the DOJ are given sufficient resources to negotiate from a position of strength, so that those that those who break the law are sufficiently punished. This is the only way to ensure that others are deterred.

Thank you for allowing my participation.

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